

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL ROMERO

Claimant

VS.

TRANSAM TRUCKING, INC.

Respondent

Self-Insured

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Docket No. 245,983

ORDER

Respondent appeals from a preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler on April 4, 2000.

ISSUES

Respondent argues the ALJ erred in ordering temporary total disability benefits because respondent had offered claimant accommodated work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Board does not have jurisdiction to consider the issue raised on appeal.

For appeals from preliminary hearing orders, the Board's authority is limited to review of allegations that the ALJ has exceeded his/her jurisdiction. K.S.A. 44-551. This includes review of the issues designated as jurisdictional in K.S.A. 44-534a. K.S.A. 44-534a designates as jurisdictional issues timely notice, timely written claim, accidental injury, arising out of and in the course of employment, and whether certain defenses apply.

Respondent argues the issue it raises on appeal—whether claimant's failure to accept its offer of accommodated employment precludes temporary total disability benefits—is a defense under K.S.A. 44-534a and therefore subject to review by the Board. The Board has, however, construed the term "defenses" in K.S.A. 44-534a as a reference to issues that go to the overall compensability of the claim. *Troy Ghramm v. Emporia Construction and Remodeling, et. al*, WCAB Docket No. 199,766 (January 1996). The Court of Appeals approved this statutory construction in *Carpenter v. National Filter Service*, Docket No. 81,106 (Kan. App. 1999).

The issue raised here is, in effect, whether claimant was temporarily and totally disabled during the period benefits were ordered. This is not an issue that goes to the compensability of the claim. It is, therefore, not a defense under K.S.A. 44-534a and it is not otherwise a jurisdictional issue. The Board, therefore, does not have authority to consider the issue raised in the appeal.

Wherefore the Board finds that respondent's appeal from the preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler on April 4, 2000, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: Bill W. Richerson, Kansas City, MO
Frederick J. Greenbaum, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director